

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

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Implementation of Section 19
of the Cable Television
Consumer Protection and
Competition Act of 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

CS Docket No. 94-48

Annual Assessment of the
Status of Competition in the
Market for the Delivery of
Video Programming

REPLY COMMENTS**I. Introduction**

Ameritech¹, pursuant to Section 1.415 of the Federal Communications Commission's ("FCC" or "Commission") Rules, 47 C. F. R. Section 1.415, respectfully submits these Reply Comments to the Commission's Notice of Inquiry in the above-captioned matter². The NOI seeks information from local exchange companies ("LECs") to be included in the FCC's annual report to Congress on the status of competition in the market for delivery of video programming.³ Specifically, the

¹ Ameritech means: Illinois Bell Telephone Company, Indiana Bell Telephone, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, and Wisconsin Bell, Inc.

² In the Matter of Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992: Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, CS Docket No. 94-48, Notice of Inquiry, FCC 94-119, released May 19, 1994 ("NOI").

³ This report is required by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, Stat. (1992) ("Cable Act of 1992").

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LEC's were asked to respond to several questions regarding video dialtone services.⁴ LECs were asked to submit information this year, because of the FCC's conclusion that "significant changes have occurred which warrant inclusion of LECs in our analysis of competition in the multichannel video marketplace."⁵

The Commission is correct that significant changes have occurred with respect to LEC participation in the video marketplace, e.g., the Video Dialtone Order⁶ and successful court challenges to the cross-ownership ban.⁷ Those changes, however, have not yet resulted in the delivery by LECs of commercially available video services to consumers. Consequently, Ameritech agrees with those commenters who argued that it is premature to consider video dialtone as a competitive alternative to cable service.⁸ Since video dialtone is not yet a competitive alternative to traditional cable programming, the FCC's report should indicate that LECs are eager to provide video dialtone, and that, when video dialtone is commercially available to a large number of customers, it has the potential of being a competitive source of video programming.

II. Burdensome Regulatory Requirements Have Delayed Deployment of Video Dialtone

LECs are willing to provide video dialtone service, but deployment of video dialtone has been delayed by regulatory hurdles. It has been almost two years since

⁴NOI at ¶ 45 and 46.

⁵Id. at ¶ 41.

⁶Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, 7 FCC Rcd 5781 (1992), recon. pending, appeal pending sub. nom., Mankato Citizens Telephone Company v. FCC, D.C. Cir. No. 92-1404 ("Video Dialtone Order").

⁷See, Chesapeake and Potomac Tel. Co. of Va. v. FCC, 123 F. Supp. 456 (E.D. Va. 1993), appeal pending sub nom. United States v. Bell Atlantic Co., (4th Cir. Filed Feb. 1, 1994) and U.S. West, Inc., et al. v. United States, No. C93-1523R (W.D. Wash. June 15, 1994).

⁸U.S. West at p. 2-3, Bell South at p. Nynex at p. 5.

the Commission's Video Dialtone Order was released.⁹ Nonetheless, the first Section 214 application for a commercial video dialtone offering was just approved on July 5, 1994.¹⁰

The numerous Section 214 applications pending before the FCC are evidence of the willingness of LECs to provide this service. Ameritech would welcome steps by the FCC to expedite the Section 214 process, and thereby expedite delivery of video services to customers. The regulatory process has imposed hurdles --Section 214 and tariff approvals-- which effectively maintain the status quo of limited consumer choice. Without a means of expediting the Section 214 and tariff processes, many more years may pass before there is an adequate basis to develop meaningful information on the impact of video dialtone.

To obtain information that would be responsive to the Congressional inquiry, video dialtone must first be made available to a large number of consumers. Pursuant to the recently granted authority, Bell Atlantic plans to offer service to 38,000 customers later this year. Contrast this limited number of subscribers with the 55,000,000 subscribers receiving cable service,¹¹ and it becomes patently clear that there is currently no basis to gather meaningful information on the impact of video dialtone on the delivery of video programming.

⁹ The Video Dialtone Order was released August 14, 1992.

¹⁰ In the Matter of the Application of New Jersey Bell Telephone Company, File No. W-P-C-6840 Order and Authorization, released July 18, 1994.

¹¹ TV & Cable Factbook, No. 62, p. F-4, 1994 Edition.

III. Information Already Provided By LECs is Adequate for the 1994 Report

There is no need to request additional information from LECs. As pointed out by Bell Atlantic in their initial comments, LECs are already required to provide detailed information concerning potential subscribers, cost and revenues in the Section 214 applications, supplemental information requests, tariffs and other filings.¹² The Section 214 approval process provides competitors a wealth of information about the LECs' planned deployment of video dialtone services. This competitively sensitive information can be used by the current cable providers in a manner that could jeopardize the viability of video dialtone. The FCC should take steps to protect the confidential and proprietary information the LECs must currently disclose, and refrain from mandating additional disclosures.

Moreover, the current legal constraints on delivery of video programming by LECs make it unlikely that LECs would have direct access to information about video programming suppliers.¹³ Information about the terms and conditions alternative video programmers must comply with to obtain popular video programming and the prices paid for that programming would be proprietary to the LEC customers of the video dialtone network.

Further, the data concerning subscribership to the basic platform —the information most likely to be available to LECs— is not necessarily helpful in assessing competition in the delivery of video programming. The basic platform will carry services other than video programming. For example, switched digital services offer consumers more options than traditional cable service and should not be

¹² See, Bell Atlantic at p. 10.

¹³ NOI at ¶ 45.

considered a direct substitute for such service. Accordingly, information on the number of subscribers to the basic platform, would not be useful in analyzing the availability of competitive sources for cable programming.

IV. Future Information Requests

Although video dialtone has not developed to the point that useful information would even be available for the 1994 report to Congress, the FCC should obtain detailed information from the incumbent cable providers on programming sources and prices. Such information can then be used as a benchmark for assessing the availability of programming to customers of video dialtone networks, and the prices such providers must pay for video programming. As noted by the FCC and by Congress, a key factor in the ability to develop competitive alternatives to cable is the ability of alternative providers to obtain popular video programming at competitive prices.¹⁴

Since Congress was also concerned about the high level of concentration in the cable business when it passed the Cable Act of 1992, the FCC should use the 1994 report as an opportunity to report on the accelerated rate of concentration in the industry since that time.¹⁵ Information on increased concentration would be useful in assessing whether any of the potential alternative sources of video programming has a chance to succeed against the incumbent cable companies.

¹⁴ See, Cable Act of 1992 at Section 2(a)(4)..

¹⁵ See, Bell Atlantic at p. 3-4.

V. Conclusion

Unfortunately, the promise of video dialtone as a competitive alternative to cable service has not been realized. The Commission has taken important steps to increase competition in the delivery of video services, but at this point it is still far too early to suggest that video dialtone is in any way an alternative to cable service. Accordingly, the FCC should refrain from implementing additional reporting requirements on admittedly "nascent" video dialtone services. Instead, the FCC should expeditiously approve the pending Section 214 applications. This would significantly advance Congress' and the FCC's goal of increasing competition in the delivery of video services to the public.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Jack K. Holley, do hereby certify that a copy of the foregoing Reply Comments has been served on all parties of record, by first class mail, postage prepaid, on this 29th day of July 1994.

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